UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CARTIER INTERNATIONAL AG, Plaintiff, v. DRIVA SA, Defendant.	Civil Action No. ___________

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Cartier International AG ("Cartier" or "Plaintiff"), by its undersigned attorneys, for its Complaint against Defendant Driva SA ("Defendant"), alleges as follows:

1. Cartier is a renowned designer, manufacturer, and retailer of fine jewelry and luxury watches. In early 2016, Cartier announced the release of its DRIVE DE CARTIER collection of watches, and shortly thereafter began offering for sale such watches in the United States.

2. Defendant purports to be the owner of the mark DRIVA in the United States and various other jurisdictions. This case arises out of Defendant's worldwide efforts to prevent Cartier from using its DRIVE DE CARTIER mark. Specifically, on February 21, 2017, Defendant sent Cartier a letter demanding that Cartier cease use of its DRIVE DE CARTIER mark in the United States and numerous other jurisdictions by March 31, 2017. A certified translation of Defendant's February 21 letter is attached hereto as Exhibit A.

3. Defendant also seeks to prevent Cartier from registering its DRIVE DE CARTIER trademark in various jurisdictions around the world. Here in the United States, Defendant has opposed Cartier's trademark application for the DRIVE DE CARTIER mark with

the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trademark Office ("USPTO"). That proceeding is pending before the TTAB.

4. In light of the unqualified threat and demand made by Defendant, there is a substantial controversy between the parties, who have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Accordingly, Cartier seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that (i) its use of the DRIVE DE CARTIER mark in connection with watches and jewelry products does not infringe any rights that Defendant purports to have in its claimed DRIVA mark; (ii) there is no likelihood of confusion arising from Cartier's use or registration of the DRIVE DE CARTIER mark in connection with its watches and jewelry products; (iii) Cartier has not engaged in any acts of unfair competition with Defendant; and (iv) Cartier not violated any other purported rights of Defendant.

THE PARTIES

5. Plaintiff Cartier International AG is a public limited company organized and existing under the laws of Switzerland, having a principal place of business at Hinterbergstrasse 22, 6330 Steinhausen, Switzerland.

6. Upon information and belief, Defendant Driva SA is a société anonyme organized and existing under the laws of Switzerland, having a principal place of business at Saint Léger 8, c/o THCB Avocats, CH-1205 Geneva, Switzerland.

JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. § 2201 to declare the rights of any party seeking a declaration and under Section 39 of the Lanham Act, 15 U.S.C. § 1121, because this action arises from Defendant's unmeritorious claims that Cartier's use and registration of the

DRIVE DE CARTIER mark is likely to cause confusion with Defendant's purported DRIVA mark. The Court also has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. The Court has personal jurisdiction over Defendant under Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure and Section 8.01-328.1 of the Virginia Code or, in the alternative, Rule 4(k)(2) of the Federal Rules of Civil Procedure because Defendant has instituted an opposition proceeding against Cartier's DRIVE DE CARTIER mark in the TTAB in Alexandria, Virginia and because Defendant has applied to register and has registered its DRIVA mark with the USPTO in Alexandria, Virginia.

9. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events giving rise to the claims occurred in this District and under 28 U.S.C. §§ 1391(b) and (c) in that Defendant is not a resident of the United States and is subject to personal jurisdiction in this District.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

I. CARTIER AND ITS DRIVE DE CARTIER MARK

A. Cartier's Use of the DRIVE DE CARTIER Mark

10. Cartier is a world-famous designer, manufacturer, and retailer of fine jewelry and luxury watches sold under the CARTIER name and mark.

11. Founded in 1847 by Louis-François Cartier, Cartier has built a reputation for fine craftsmanship in the field of jewelry and watches. Today, the company offers for sale and sells a wide range of products, including fine jewelry, watches, handbags, belts, eyewear, and other accessories. Cartier's commitment to innovation in design and function, as well as the use of only the finest materials, has brought it renown as a leading maker of luxury goods.

12. Cartier has long offered its products as part of collections, each of which has its own brand name. Many of the collection names include the CARTIER house mark, such as PANTHÈRE DE CARTIER, SANTOS DE CARTIER, and MARCELLO DE CARTIER.

13. Consistent with this practice, in January 2016, Cartier announced a new collection of watches called DRIVE DE CARTIER. The DRIVE DE CARTIER watch has a vintage design, with a rounded cushion shape and elegant and slim lines. The face of the watch features the CARTIER house mark, not the DRIVE DE CARTIER mark. The design and function of the DRIVE DE CARTIER watches has been praised by both consumers and the trade, and the watches have been a commercial success.

14. DRIVE DE CARTIER watches are sold in Cartier boutiques, on Cartier's website located at *www.cartier.com*, and in approved third-party retailers where the DRIVE DE CARTIER watches are grouped with other CARTIER brand watches.

15. Cartier has spent significant resources advertising and promoting the DRIVE DE CARTIER watches. All advertisements for the DRIVE DE CARTIER watches prominently feature the CARTIER house mark. Therefore, all use of the DRIVE DE CARTIER mark is tied to Cartier, making it immediately known to consumers that Cartier is the source of DRIVE DE CARTIER watches.

16. As a result of the fact that DRIVE has a completely different commercial impression and meaning from the word DRIVE, and the fact that the DRIVE DE CARTIER mark includes the CARTIER house mark and that the CARTIER house mark is otherwise prominently featured with all use of the DRIVE DE CARTIER mark, an appreciable number of ordinarily prudent consumers are not likely to be confused as to the source or sponsorship of

Cartier's products or to believe Cartier or its products are associated with Defendant or its DRIVA products.

B. Cartier's Application for the DRIVE DE CARTIER Mark

17. To protect its rights in the DRIVE DE CARTIER mark in the United States, on June 7, 2016, Cartier filed Application Serial No. 79/190,756 with the USPTO to register the DRIVE DE CARTIER mark for use in connection with "jewelry; watches" in International Class 14. Cartier's application with the USPTO is based on an international registration for the DRIVE DE CARTIER mark under Section 66(a) of the Lanham Act, 15 U.S.C. § 1141f(a).

18. Cartier's application for the DRIVE DE CARTIER mark was published for opposition on November 1, 2016. The USPTO did not cite Defendant's DRIVA mark as a bar to registration of Cartier's DRIVE DE CARTIER mark.

II. DEFENDANT'S PURPORTED DRIVA MARK AND THREAT OF LEGAL ACTION

19. Defendant purports to be a watch manufacturer that offers watches under the mark DRIVA.

20. Defendant asserts that it recently obtained trademark registrations for its purported DRIVA mark in various jurisdictions around the world. In the United States, Defendant owns U.S. Registration No. 5,088,897 for the DRIVA mark for use in connection with "precious metals and their alloys and goods made of these materials or coated therewith included in this class, namely, timepieces, parts of timepieces and chronometric instruments, watch parts, watch movements, watch crowns, watch bands, watch chains, watch clasps, buckles for watch straps, cuff links; jewelry; precious stones; timepieces and chronometric instruments" in International Class 14. Defendant's registration is based on an international registration for the DRIVA mark under Section 66(a) of the Lanham Act, 15 U.S.C. § 1141f(a).

21. Defendant's U.S. registration for the DRIVA mark coexists with numerous other U.S. registrations for DRIV-formative marks in International Class 14 that predate Defendant's U.S. registration. Moreover, several third parties are using DRIV-formative marks in the United States in connection with goods in International Class 14, with such uses predating Defendant's U.S. registration for the DRIVA mark.

22. On February 21, 2017, months after Cartier began using its DRIVE DE CARTIER mark in connection with watches, Defendant sent Cartier the demand letter attached hereto as Exhibit A. In its February 21 letter, Defendant demanded that Cartier, by no later than March 31, 2017, "cease offering, putting into circulation and/or promoting" products in International Class 14 under the DRIVE BY CARTIER mark and "withdraw and/or have withdrawn from sale" all products in International Class 14 bearing the DRIVE BY CARTIER mark. Defendant demanded that such action be taken in all jurisdictions in which Defendant owns trademark registrations for its DRIVA mark, which, according to Defendant's own letter, include the United States, the European Union, Switzerland, China, Russia, and Japan. Defendant also demanded in its February 21 letter that Cartier abandon all trademark applications for the DRIVE DE CARTIER mark in the same list of jurisdictions.

23. On March 2, 2017, Defendant filed a Notice of Opposition against Cartier's U.S. application, which the TTAB instituted as Opposition No. 91233253. Defendant asserted claims for likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and false suggestion with a person, living or dead, under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

24. Defendant alleges in its opposition that "[Cartier's] mark is likely, when applied to [Cartier's] goods, to cause confusion, and mistake and to deceive as to the affiliation,

connection, or association of [Cartier] with [Defendant], or as to the origin, sponsorship, or approval of [Cartier's] goods, or commercial activities, with consequent injury to [Defendant], the consumer and the trade."

25. Cartier timely answered Defendant's Notice of Opposition on April 17, 2017. The opposition remains pending before the TTAB.

26. As a result of Defendant's legal threats, Cartier has been put in the untenable position of not knowing if or when Defendant may sue or take other action against Cartier or otherwise interfere with Cartier's selling, advertising, and promotion of its DRIVE DE CARTIER watches and jewelry products. Defendant's threats case a cloud over Cartier's business.

27. In order to resolve this situation, Cartier now brings this action for a declaratory judgment that (i) its use of the DRIVE DE CARTIER mark in connection with watches and jewelry products does not infringe any rights that Defendant purports to have in its claimed DRIVA mark; (ii) there is no likelihood of confusion arising from Cartier's use or registration of the DRIVE DE CARTIER mark in connection with its watches and jewelry products; (iii) Cartier has not engaged in any acts of unfair competition with Defendant; and (iv) Cartier not violated any other purported rights of Defendant.

COUNT I –
CLAIM FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT

28. Cartier realleges and incorporates by reference each of the foregoing allegations as if fully set forth herein.

29. Defendant has claimed that Cartier's use and registration of the DRIVE DE CARTIER mark is likely to cause confusion with Defendant's purported DRIVA mark. Because of Defendant's actions and demands described herein, there is a substantial controversy between

the parties, who have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

30. The differences between the parties' trademark and use prevent any likelihood of confusion, including because DRIVE has a completely different commercial impression and meaning from the word DRIVE, and the fact that the DRIVE DE CARTIER mark encompasses the well-known CARTIER house mark and because Cartier otherwise uses the DRIVE DE CARTIER mark in close proximity to its CARTIER house mark.

31. There are numerous DRIV-formative marks in use by third parties for goods in International Class 14. Consumers therefore will not assume that all goods offered under DRIV-formative marks emanate from a common source.

32. Cartier has taken no action to associate itself or its products with Defendant or its products.

33. Cartier's use and registration of its DRIVE DE CARTIER mark in connection with watches and jewelry products has not caused, and is not likely to cause, confusion, mistake, or deception as to the source, origin, sponsorship, or approval of Cartier's products.

34. Cartier's use of its DRIVE DE CARTIER mark in connection with watches and jewelry products does not violate any rights of Defendant, including any rights under Sections 32 or 43 of the Lanham Act, 15 U.S.C. § 1114, 1125(a), or any state infringement or unfair competition laws.

35. Cartier is entitled to a declaration that its use of the DRIVE DE CARTIER mark, and any registrations for such marks, in connection with watches and jewelry products is not likely to create confusion in the marketplace with Defendant's DRIVA watches and that Cartier has not violated Sections 32(1) or 43(a) of the Lanham Act, 15 U.S.C. § 1114(a), 1125(a), or

applicable state law, nor engaged in any acts that would constitute unfair business practices under applicable law.

WHEREFORE, Plaintiff demands judgment as follows:

a) declaring that Cartier, in the promotion and sale of DRIVE DE CARTIER watches and jewelry, has not infringed on any rights, including any trademark-related rights, of Defendant and that Cartier the lawful right to use the DRIVE DE CARTIER mark on or in connection with its products, and to advertise and promote the same;

b) declaring that Cartier's use of the DRIVE DE CARTIER mark for its watches and jewelry products: (i) is not likely to create confusion among consumers as to the source or sponsorship of Cartier's products and is not likely to cause consumers to mistakenly believe that Cartier's products are associated, sponsored or are otherwise approved by Defendant, or that there is some relationship between the parties; and (ii) does not constitute trademark infringement or unfair competition in violation of the Lanham Act or under applicable state law or common law, or otherwise constitute unfair business practices under applicable state or common law;

c) permanently enjoining Defendant from asserting claims or filing actions against Cartier arising out of Cartier's use of the DRIVE DE CARTIER mark in connection with watches and jewelry products, objecting to Cartier's pending DRIVE DE CARTIER trademark application, or interfering with any registrations that issue therefrom, or making any threats against Cartier for infringement, or interfering in any way with Cartier's use or registration of the DRIVE DE CARTIER mark in connection with watches and jewelry products;

d) awarding Cartier any and all damages sustained by it as a result of Defendant's threats of legal action and any other interference by Defendant with Cartier's business activities; and

e) awarding Cartier its costs in this action, including attorneys' fees, together with such other and further relief as the Court may deem just and proper.

Dated: May 1, 2017

Respectfully submitted,

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